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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JOHN MITCHELL

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.

Defendants.

Case No. 3:05-cv-00264-JWS

**MOTION FOR SUBSTITUTION AND
TO AMEND CAPTION**

NOW COMES the United States of America, through counsel, on behalf of Defendant Dennis Dunn, and submits a Motion for Substitution and to Amend Caption.

Please take notice that pursuant to the Federal Employees Liability Reform and Tort Compensation Act of 1988, §§ 5 and 6, Pub.L.No. 100-694, 102 Stat. 4563 (1988), codified at 28 U.S.C. §2679(d), the United States is hereby substituted for Dennis Dunn as to Counts E, G and H brought against him by John Mitchell in the above captioned case. The grounds for this substitution are:

1. The Federal Tort Claims Act, 28 U.S.C. §§1346(b), 2671, et seq., as amended by the Federal Employees Liability Reform and Tort Compensation Act of 1988, §5, Pub.L.No. 100-694, 102 Stat. 4563 (1988), provides that a suit against the United States shall be the exclusive

remedy for persons with claims for damages resulting from the actions of federal employees taken within the scope of their office of employment. 28 U.S.C. § 2679 (b) (1).

2. Section 6 of the Federal Employees Liability Reform and Tort Compensation Act provides that upon certification by the Attorney General that a federal employee was acting within the scope of his or her office or employment at the time of the incident out of which a state law claim arises, any civil action arising out of the incident shall be deemed an action against the United States, and the United States shall be substituted as sole defendant with respect to those claims. 28 U.S.C. § 2679(d)(1), and (2). The Attorney General has delegated certification authority to the Assistant Attorney General in charge of the Civil Division. 38 C.F.R. §15.3 (1990). The Assistant Attorney General in charge of the Civil Division has re-delegated certification authority to United States Attorneys. Appendix to 28 C.F.R. § 15.3 (1990).

3. Deborah M. Smith, Acting United States Attorney for the District of Alaska, has certified that the Defendant was acting within the scope of his employment as an employee of the United States at the time of the allegations contained in the Plaintiff's Complaint. This certification is attached as Exhibit A to this pleading.

Accordingly, the United States moves that the caption be amended to reflect this notice of substitution, removing Dennis Dunn from the caption and substituting the United States as the Defendant as to Counts E, G and H of Plaintiff's complaint. Mr. Dunn should be dismissed as a party.

Respectfully requested this 13th day of March, 2006, in Anchorage, Alaska.

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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2006,
a copy of the foregoing MOTION FOR
SUBSTITUTION AND TO AMEND
CAPTION was served electronically
on Joe P. Josephson, Esq.

s/ Richard L. Pomeroy